

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONYA HUTCHINGS
o.b.o. T.K.H.,

Plaintiff,

CASE NO. 1:16-CV-1459

v.

COMMISSIONER OF SOCIAL
SECURITY,

HON. ROBERT J. JONKER

Defendant.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Carmody's Report and Recommendation in this matter (ECF No. 13) and Plaintiff's Objection to it (ECF No. 14). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . as a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Magistrate Judge recommends affirming the Commissioner's decision on the basis that the ALJ's decision is supported by substantial evidence. The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objection to it. After its review, the Court finds that Magistrate Judge Carmody's Report and Recommendation is factually sound and legally correct and accordingly adopts its conclusion.

PLAINTIFF'S OBJECTION

Plaintiff raises two objections, both of which lack merit. First, Plaintiff argues the Magistrate Judge was too deferential to the Commissioner in the standard of review applied to the case. Plaintiff's Objections are overruled. The Magistrate Judge applied well worn Sixth Circuit law in stating: “[t]he scope of judicial review in a social security case is limited to determining whether the Commissioner applied the proper legal standards in making her decision and whether there exists in the record substantial evidence supporting that decision.” (ECF No. 13, PageID.838-839) (citing *Brainard v. Sec'y of Health & Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989)). The Magistrate Judge then proceeded to apply this standard by determining the Commissioner's decision was supported by substantial evidence. Accordingly there is no error on this point.

Second, Plaintiff Objects to the Magistrate's conclusion that substantial evidence supported the ALJ's step three determination in this child disability case. This Objection will also be overruled. Plaintiff largely reiterates and expands arguments made in the initial brief. The Report and Recommendation already carefully, thoroughly, and accurately addresses these arguments. Nothing in Plaintiff's Objection changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that the Commissioner's decision is supported by substantial evidence for the very reasons the Report and Recommendation delineates.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 13) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that the Commissioner's decision is **AFFIRMED**.

A separate Judgment shall issue.

Dated: February 27, 2018

/s/ Robert J. Jonker

ROBERT J. JONKER

CHIEF UNITED STATES DISTRICT JUDGE